

1 *E-filed on* 11-17-06

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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
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12 IN RE CYGNUS TELECOMMUNICATIONS
13 TECHNOLOGY, LLC, PATENT
LITIGATION

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15 THIS ORDER RELATES TO:
All Actions

No. MDL-1423
This Order Applies to All Actions


C-02-00142 RMW
C-02-00145 RMW
C-02-05437 RMW
C-03-03378 RMW
C-03-03594 RMW
C-03-03596 RMW
C-03-04003 RMW
C-04-03001 RMW
C-04-03365 RMW
C-04-04247 RMW
C-04-04359 RMW
C-06-03843 RMW
C-06-04295 RMW
C-06-06479 RMW

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21 ORDER DENYING DEFENDANTS'
22 MOTION TO DISMISS FOR LACK OF
SUBJECT-MATTER JURISDICTION

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24 Defendants assert that Cygnus does not own the patents-in-suit and move to dismiss these
25 consolidated actions for lack of subject-matter jurisdiction. Although troubled by the
26 inconsistencies in the evidence pertaining to the assignment of the patents to Cygnus, the court is
27 satisfied that Cygnus has shown by a preponderance of the evidence that the assignment set forth in
28 the September 1997 operating agreement is genuine. Cygnus's explanation that the representations

1 in Paragon's May 1998 petition to the Federal Circuit regarding the '984 application (case no. 98-
2 547) and Wyatt's April 1998 declaration filed with the PTO in connection with the '115 application
3 regarding Paragon's ownership of the applications occurred through inadvertence seems logical in
4 light of the facts that Cygnus paid the issuance fees for the patents and represented to the PTO that
5 an assignment had taken place, has acted as the owner of the patents since their issuance, and the
6 September 1997 assignment was between entities both controlled by Wyatt. However, since
7 Cygnus's counsel admittedly failed to record the assignment, failed to produce evidence of an
8 assignment until October 2006, and filed two documents stating that Paragon was the owner of the
9 patents after the date of the assignment, the court would consider a motion for reasonable fees and
10 expenses incurred by defendants in pursuit of this motion. The motion to dismiss is denied.

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13 DATED: 11/17/06



RONALD M. WHYTE
United States District Judge

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Counsel is responsible for distributing copies of this order to co-counsel, as necessary.